IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 74 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ATUL PRODUCTS LTD.

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 15/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, four questions

are referred to us for our opinion in respect of assessment year 1982-83. The questions are set out hereinafter.

Question No. 1 Whether in law and on facts all the tours undertaken during the previous years are required to be taken together for the purpose of Rule 6D of Income-tax Rules, 1962?

The controversy raised herein is concluded by our decision dated 6.2.1001 in Income-tax Reference No. 54 of 1988 wherein we have held that all the tours undertaken by an employee during a year are not to be grouped together and that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee.

In view of the above, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

Question No. 2 Whether the deletion of addition (1) medical benefit, (2) house rent allowance and (3) personal accident premium under sec. 40(c) of the I.T. Act, 1961 is justified in law ?

The question is required to be separated into three parts. As far as the reimbursement of medical benefits is concerned, this Court has taken the view in Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 IT 358 and Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264 that reimbursement of medical benefits given to the Managing Director/Director of a Company is not required to be considered as a benefit within the meaning of Section 40(c) of the Income Tax Act, 1961. For this part of the question, our answer is, therefore, in the affirmative i.e. in favour of the assessee and against the revenue.

As regards payment of house rent allowance paid to the Managing Director/Director of the Company, Mr Naik, learned counsel for the revenue states that the said controversy is concluded by the decision of this Court in Ambica Mills Ltd. vs. CIT, (1998) 231 ITR 583 and the decision dated 6.2.2001 in Income Tax Reference

The controversy has been decided in favour of the revenue and we accordingly answer this part of the question in the negative and we hold that the house rent allowance was required to be treated as a benefit within the meaning of Section 40(c) of the Act.

Coming to the personal accident premia paid for the policies in respect of the Managing Director/Director of the Company, the view taken by this Court in CIT vs. Ambica Mills Ltd., 236 ITR 921 is that if the policy was taken out by the Company and not by the directors, the policy must be treated to have been taken out for the benefit of the Company. Certain other decisions are also referred to in the said judgment and Mr Naik, learned counsel for the revenue, therefore, submits that the matter may be remitted to the Tribunal or to the Assessing Officer for fresh inquiry to decide whether the premia paid on the personal accident insurance policy in respect of the Managing Director/Director of the Company were benefits to the Managing Director/Directors within the meaning of Section 40(c) of the Act.

In view of the fact that the amounts of premia involved in this case are only Rs.825/and Rs. 991/- for the personal accident insurance policies in respect of two Managing Directors, we are not inclined to accept the submission of Mr Naik. We accordingly decline to answer the question.

Question No. 3 Whether in law and on facts, the Appellate Tribunal is right in deleting the additional of subsidy received for caustic soda plant considered for reducing the cost of asset ?

Both the CIT (Appeals) as well as the Tribunal have taken the view that the subsidy in question was a capital grant for the development of industries in certain specified areas and it was not specifically granted to purchase the assets in question. Hence, the cost of the assets in question cannot be reduced by the amount of subsidy.

Considering the principles laid by the Supreme Court in CIT vs. P.J. Chemicals, 210 ITR 830 and the aforesaid concurrent finding of fact given by the CIT

(Appeals) and the Tribunal, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

Question No. 4 Whether in law and on facts, the deletion of addition made on account of medical benefit u/s. 40A(5) of the I.T. Act, 1961 is justified ?

As far as this question is concerned, in view of the decision of this Court in CIT vs. Ambica Mills Ltd., 236 ITR 921 taking the view that reimbursement of medical benefits is not to be considered while calculating the ceiling limit under Section 40A(5) of the Act, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-